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CONCORD, N.H.

Mr. Rodney A. Griffin, III
Secretary
New Hampshire Commission on Pharmacy
Room 124, State House
Concord, New Hampshire

Dear Mr. Griffin:

This is in reply to your letter of May 26, 1958, in which you enclosed a letter from the Knoll Pharmaceutical Company to the State Board of Health dated April 1, 1958.

In its letter the Knoll Pharmaceutical Company states that in the Federal Register for March 6, 1958, page 1599, the regulation pertaining to the dispensing of narcotic drugs on oral prescription is amended, as T.D. 57, by addition of the following new paragraph:

"Any compound consisting of dihydrocodeine or any salt thereof with one or more active non-narcotic ingredients in recognized therapeutic amounts, where the content of dihydrocodeine or any salt thereof does not exceed eight grains per fluid ounce or one grain per dosage unit of the compound."

The Knoll Pharmaceutical Company then inquires whether or not the laws of New Hampshire provide for automatic admission of such amendments to our state narcotic regulations.

In this connection we direct your attention first to RSA 318:1, XIII (supp) which defines the term "prescription" as follows:

"prescription means a verbal or written order for drugs, medicines and devices by a legally competent practitioner of medicine, dentistry, or veterinary medicine, to be compounded and dispensed by a registered pharmacist in a duly registered pharmacy, and to be kept on file for a period of two years. Prescriptions may also apply to the finished products dispensed by the registered pharmacist in the registered pharmacy, on order of a legally competent practitioner as previously defined." *(emphasis added)*

RSA 318:50 provides in essence that narcotic drugs or compounds may be sold "by apothecaries or druggists upon the original prescription of a physician; provided, that the prescription is retained and kept on file for two years as authority for the sale and not refilled."

As a result of RSA 318:1, XIII, an "original prescription of a physician" may be either oral or written and it is thus our opinion that any narcotic drug or compound may be dispensed by apothecaries or druggists upon oral prescription, provided that the prescription is retained and kept on file for two years and provided further that the oral prescription may not be refilled.

The sale of narcotic drugs and compounds is a matter of Federal as well as State regulation. The Federal law has been amended to recognize oral prescriptions to a limited degree. 26 U.S.C.A. section 2554(c)(2) provides that:

"In lieu of a written prescription for such narcotic drugs or compounds of a narcotic drug which the Secretary, [of the Treasury] in his discretion . . . shall find and by regulation designate to possess relatively little or no addiction liability, the sale, dispensing, or distribution may be made by a dealer to a consumer upon oral prescription of a duly registered physician, dentist, veterinary surgeon, or other practitioner, which oral prescription is reduced promptly to writing, and the writing filed and preserved by the dealer for a period of two years from the date on which such prescription is filled . . . In issuing an oral prescription, the prescriber shall furnish the dealer with the same information as is required by law or regulation in case of a written prescription for narcotic drugs or compounds of a narcotic drug except for the written signature of the prescriber, and the dealer who fills such prescription shall be required to inscribe such information on the written record of the prescription made, filed and preserved by him, and shall inscribe on the label of the container of the narcotic drug or compound of a narcotic drug the same information as is required in filling a written pre-

Mr. Rodney A. Griffin, II

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scription. An oral prescription shall not be refilled."

It is our opinion that any narcotic drug or compound which qualifies for oral prescription under the above quoted section of the federal law may also be dispensed upon oral prescription under existing New Hampshire law. New Hampshire druggists should, however, exert extreme caution to comply with the requirements of the Federal law quoted above with respect to committing the oral prescription to writing, preserving the prescription for two years, inscription of the proper information on the label of the container, etc. It is also to be noted that under both New Hampshire and Federal law an oral prescription may not be refilled.

Very truly yours,

George T. May, Jr.
Assistant Attorney General

GTR, Jr/Lt